

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 1081.

**PHILADELPHIA, BALTIMORE AND WASHINGTON
RAILROAD COMPANY, PETITIONER,**

vs.

ALFRED H. SMITH.

**ON PETITION FOR CERTIORARI TO THE COURT OF APPEALS OF
MARYLAND.**

**MOTION FOR STAY OF EXECUTION PENDING ACTION
ON PETITION FOR CERTIORARI.**

Now comes petitioner, Philadelphia, Baltimore and Washington Railroad Company, by its attorneys, and respectfully moves this Honorable Court to direct stay of execution upon the judgment of the Circuit Court for Caroline County, Maryland, lately affirmed by the Court of Appeals of the State of Maryland, and complained of and sought to be brought under review by this Honorable Court by means of the petition for certiorari heretofore filed and now pending herein, and as ground for such motion respectfully shows:

1. Judgment against petitioner Philadelphia, Baltimore and Washington Railroad Company and in favor of respond-

ent Alfred H. Smith, for the sum of \$4,000 was entered in the Circuit Court for Caroline County, Maryland, on April 16, 1917.

Appeal to the Court of Appeals of Maryland was perfected and execution of said judgment stayed by the filing of an approved bond on June 8, 1917 (R., 2). Said bond is still in force.

2. On hearing in due course the Court of Appeals of Maryland affirmed with costs said judgment of the Circuit Court for Caroline County and issued remittitur.

3. To review the judgment of said Court of Appeals of Maryland, which rests upon manifest error in the construction and application in the circumstances of the provisions of the Federal Employers' Liability Act of 1908, petitioner, Philadelphia, Baltimore and Washington Railroad Company, within the three months allowed by statute (act of September 6, 1916; 39 Stats., 746) filed in this Court on the 27th day of May, A. D. 1918, its petition for writ of certiorari, and as authorized by the provisions of paragraph 4 of Rule 37 of the Rules of Practice of this Honorable Court and strictly complying in every respect with the requirements of said rule, gave and served notice upon opposing counsel of intention to submit said petition to this Court on Monday, October 7, 1918, or so soon thereafter as counsel may be heard, said date offering the first motion day occurring after the expiration of four weeks from date of filing said petition.

4. Subsequent to the entry by the Court of Appeals of Maryland of its said judgment of affirmance, and prior to the filing in this court of said petition for certiorari, that is, on the 21st day of March, 1918, the President of the United States approved "An act to provide for the operation of transportation systems while under Federal control," &c., &c., section 10 whereof provides that while action at law and suits in equity "may be brought by and against carriers under Federal control" (petitioner being of such carriers), "and judgments rendered as now provided by law," never-

theless "no process, mesne or final, shall be levied against any property under such Federal control."

5. Notwithstanding all of the above the respondent Alfred H. Smith, by his attorneys of record, have demanded and are continuing to demand payment of the judgment hereinbefore described, and threaten to issue execution and to levy same upon the property of your petitioner, irrespective of the prohibitions of said statute of May 21, 1918, and of the pendency of the petition for writ of certiorari herein.

Wherefore petitioner moves for the entry of an order herein directing the staying of execution of the judgment of the Circuit Court for Caroline County hereinbefore complained of, until such time as this Court proceeding in due course under its Rules of Practice shall first have considered and disposed of the petition for writ of certiorari herein.

FREDERIC D. McKENNEY,
JOHN SPALDING FLANNERY,
Attorneys for Petitioner.

STACY B. LLOYD,
HENRY R. LEWIS,
Of Counsel.

Statement of Character of Case.

This is an action brought by Smith against the Philadelphia, Baltimore and Washington Railroad Company under the provisions of the Federal Employers' Liability Act of 1908, and the novel question presented in the case is whether Smith, who was a cook and camp-car cleaner for a gang of bridge carpenters engaged in repairing a bridge on defendant's line used in interstate commerce, was himself so connected with such commerce as to entitle him to recover for injuries received while he was "basting a big turkey" in the camp car which was on a side-track where it had been

lying for three weeks, the bridge carpenters and the bridge under repairs being considerable distance away; beyond the preparation of the food and the cleaning of the camp car, the plaintiff Smith having no connection with either.

JOHN SPALDING FLANNERY,
FREDERIC D. McKENNEY,
Attorneys for Petitioner.

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